

1979 WL 42930 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 17, 1979

\*1 Honorable David Turnipseed

Senator

District No. 4

The South Carolina Senate

State House

Columbia, South Carolina

Dear Senator Turnipseed:

You have requested an opinion from this Office as to when an election for city council members should be held after the referendum provided for in [Section 5-5-20, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, results in a change in the form of government. In my opinion, such an election should be held at the next general election for city council members pursuant to [Section 5-5-60, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, which provides in part as follows: . . . on any change to one of the alternate forms of government, all members of the existing governing body shall continue to serve their elected terms and until their successors are elected and qualify.

In view of this language, the results of a referendum changing a form of government would not be immediately implemented by means of any type of special election. Instead, the change becomes effective upon the expiration of the terms of the council members serving at the time the referendum is held. In addition, the United States Justice Department pre-clearance requirements imposed by Section 5 of the 1965 Voting Rights Act would have to be met if a city changes from one form of government to an alternate one.

You have also inquired as to the status of the manager when the council-manager form changes to a non-manager form. In my opinion, the manager's statutory duties [[§ 5-13-90, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended] would not cease until the council-manager form itself ceases, *i.e.*, upon the commencement of the terms of the council members elected at the next general election held after the referendum resulting in a change takes place. Of course, so long as the council-manager form is operative, the manager serves at the pleasure of the council pursuant to [Section 5-13-70, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

With kind regards,

Karen LeCraft Henderson

Senior Assistant Attorney General

1979 WL 42930 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.